Vulcan Golf, LLC v. Google Inc. et al Doc. 184

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

VULCAN GOLF, LLC, JOHN B. SANFILIPPO & SON, INC., BLITZ REALTY GROUP, INC., and VINCENT E. "BO" JACKSON, Individually and on Behalf of All Others Similarly Situated,	§	Civil Action No. 07 CV 3371
Lead Plaintiffs,	§	Honorable Blanche M. Manning
v.	§	Magistrate Judge Geraldine Soat Brown
GOOGLE INC., OVERSEE.NET, SEDO LLC, DOTSTER, INC., AKA REVENUEDIRECT.COM, INTERNET REIT, INC. d/b/a IREIT, INC., and JOHN DOES I-X,	§	
Defendants.	§	

PLAINTIFFS' SUPPLEMENT TO RESPONSE BRIEF IN LIGHT OF THE UNITED STATES SUPREME COURT'S RULING IN *BRIDGE V. PHOENIX BOND & INDEMNITY CO., ET AL*

On June 9, 2008, the United States Supreme Court affirmed the Seventh Circuit's holding in *Phoenix Bond & Indemnity Co. v. Bridge*, *et al*., 477 F.3d 928 (7th Cir. 2007), a case relied upon by Plaintiffs in support of their Racketeer Influenced and Corrupt Organizations Act ("RICO"), 18 U.S.C.A § 1962, claims. *Bridge v. Phoenix Bond & Indemnity Co., et al.*, 128 S. Ct. 2131 (2008).[1] *See Bridge v. Phoenix Bond & Indemnity Co., et al, Supreme Court Opinion, attached hereto as Exhibit A*. Plaintiffs respectfully move this Court to allow Plaintiffs to

[1] On May 16, 2008 Lead Plaintiffs filed a Response to Defendants' Consolidated Motion to Dismiss Plaintiffs' Third Amended Class Action Complaint. *See Plaintiffs' Response to Defendants' Consolidated Motion to Dismiss Plaintiffs' Third Amended Class Action Complaint.*

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supplement their Response Brief with said new authority. In support of their motion, Plaintiffs state as follows:

1. In contrast to Defendants' "policy" arguments against permitting civil RICO actions and suggestions that this Court employ a cautious and limited approach aimed at curbing the proliferation of civil RICO claims, the Supreme Court's *Phoenix Bond* ruling affirms the importance of permitting private civil RICO actions and actually cautions against adopting "narrowing constructions of RICO" that essentially re-write RICO to conform to policy concerns (i.e., limiting RICO to criminal racketeering enterprises).[2] The Court reasoned that: "(I)f the absence of such a requirement leads to the undue proliferation of RICO suits, the 'correction must lie with Congress.'" *Bridge*, 128 S.Ct. at 2145, quoting *Sedima, S.P.R.L. v. Imrex Co.,* 473 U.S. 479, 499, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985). "It is not for the judiciary to eliminate the private action in situations where Congress has provided it." *Sedima, S.P.R.L.,* 473 U.S. at 499-500, 105 S.Ct. 3275.

2. *Phoenix Bond* squarely rejects Defendants' arguments that reliance is an element of the RICO claims. *See Defendants' Memorandum of Law in Support of Defendants' Consolidated Motion to Dismiss the Third Amended Class Action Complaint, pg. 21-22.* Although Plaintiffs cited the 7th Circuit *Phoenix Bond* holding in their Response Brief, (*See Plaintiffs' Response to Defendants' Consolidated Motion to Dismiss the Third Amended Class Action Complaint, pp. 17, 25, 26)*, as of the time of filing the briefs, the case was on appeal and

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[2] Court citing in support, *National Organization for Women, Inc. v. Scheidler,* 510 U.S. 249, 252, 114 S.Ct. 798, 127 L.Ed.2d 99 (1994) (rejecting the argument that "RICO requires proof that either the racketeering enterprise or the predicate acts of racketeering were motivated by an economic purpose"); *H.J. Inc. v. Northwestern Bell Telephone Co.,* 492 U.S. 229, 244, 109 S.Ct. 2893, 106 L.Ed.2d 195 (1989) (rejecting "the argument for reading an organized crime limitation into RICO's pattern concept"); *Sedima, S.P.R.L. v. Imrex Co.,* 473 U.S. 479, 481, 105 S.Ct. 3275, 87 L.Ed.2d 346 (1985) (rejecting the view that RICO provides a private right of action "only against defendants who had been convicted on criminal charges, and only where there had occurred a 'racketeering injury' ").

the United States Supreme Court had not ruled. On June 9, 2009, the Supreme Court affirmed unequivocally that "reliance," and even more specifically "first party reliance" is not an element of a RICO claim. *Bridge*, 128 S.Ct. at 2145.

3. Defendants further argue that Plaintiffs' claims are merely "derivative" injuries that are insufficient to establish RICO liability. *Defendants' Consolidated Motion to Dismiss the Third Amended Class Action Complaint, pg. 21-22*. Again, in contrast to Defendants' argument, the Supreme Court's *Phoenix Bond* decision establishes first-party reliance is not necessary "to ensure that there is a sufficiently direct relationship between the defendant's wrongful conduct and the plaintiff's injury to satisfy…proximate cause…" *Bridge*, 128 S. Ct. at 2143. The Court further acknowledged that: "(t)he legal injury from a fraudulent misrepresentation is not limited to only those who rely on it." *Id.* Plaintiffs have sufficiently alleged actionable injuries that were directly and proximately caused by Defendants' wrongful conduct. The Supreme Court's *Phoenix Bond* holding confirms that nothing more is required of Plaintiffs, and contrary to Defendants' suggestion, Plaintiffs are not required to allege that they directly relied upon, or were the recipient of, each of the numerous acts of mail and wire fraud.

4. The Supreme Court's ruling in *Bridge v. Phoenix Bond & Indemnity Co*., *et al*, directly supports Plaintiffs' RICO claims and corresponding arguments made in their responsive briefing. It affirms that Plaintiffs' pleadings were more than adequate and sufficient to state valid RICO claims.

WHEREFORE, for the foregoing reasons, Plaintiffs respectfully request this Court allow Plaintiffs to supplement their Response brief and incorporate the Supreme Court's June 9, 2008 decision in *Bridge v. Phoenix Bond & Indemnity Co., et al.*

Dated: July 3, 2008 FOOTE, MEYERS, MIELKE & FLOWERS, LLC

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CERTIFICATE OF SERVICE

I hereby certify that on July 3, 2008, I electronically filed the foregoing document with the clerk of court for the U. S. District Court, Northern District of Illinois, using the electronic case filing system of the court. The electronic case filing system sent a "Notice of Electronic Filing" to the following attorneys of record who have consented in writing to accept this Notice as service of this document by electronic means:

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